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THE LIABILITY OF PARTNERS FOR SLANDER.

That the words of one are not the words of another, and that each individual should only be responsible for the injury inflicted by his own independent act is a recognized principle of law. For that reason the treatise writers nearly all lay it down as a rule that ordinarily there can be no joint action for slander.

Concerning the question as to whether a partner can be joined in an action with a co-partner there is no very great weight of authority. In the recent case of *Duquesne Distributing Co. v. Greenbaum,* reported in the 121 S. W. Rep. 1026, it was held that partners are not jointly liable for slanderous words spoken by one of them, unless authorized by the other, but that they are liable as a firm for slander committed by an employee whom they have authorized to speak, or whose words they have ratified. There was an editorial comment on this case in the *New York Law Journal* in its issue of December 1, 1909.

In this case the plaintiff was a corporation making a mineral water sold principally to liquor dealers. They alleged that defendant, wishing to injure plaintiff's business, made slanderous

statements through its traveling salesman, who was acting within the scope of his authority, that the plaintiff had contributed money to advance the prohibition cause and such assertion caused the damage complained of.

Slander is defined to be "the malicious defamation of a man with respect to his character, or his trade, profession or occupation, by word of mouth." 13 *Am. & Eng. Ency. of Law,* 296.

It is laid down in *Cooley on Torts,* p. 124, that slander is one of the several wrongs which in its very nature is essentially individual. He says: "This (meaning slander) is an individual action because there can be no joint utterance. He alone can be liable who spoke the words; and if two or more utter the slander at the same time, still the utterance of each is individual, and must be the subject of a separate proceeding for redress."

This may be further illustrated by the following section (113) from *Townsend on Slander and Libel*: "Speech is but sound, a mere vibration of the atmosphere cognizable only by the auditory sense. From its nature it necessarily follows that the *same* sound cannot be repeated; a *similar* or *like* sound may be produced, undistinguishable in every respect from the first, and of the like character and signification, but that will not be the same sound. One who repeats a word previously spoken does not utter the identical word, but a similar or like word; he repeats a *like* sound of the *same signification* as the first. The two sounds are separate and distinct, although each has the same meaning. Hence each publication of oral language is a new and distinct and separate publication."

In *Gilbert v. Crystal Mountain Lodge,* 80 Ga. 284, the court said by *obiter dicta*: "Whether a partnership can slander anybody might formerly have admitted of some question; for it is an old rule going back to *Croke's Reports*—perhaps farther still, that there can be no joint action against several persons for oral words. The courts considered that if two uttered the same words simultaneously, the vocal act of each would have a separate identity and be an individual act; and so actions for such torts ought to be several and not joint."

There is this exception to this strict rule in the older cases: Where a slanderous song was chanted in concert by several voices, the court held that a joint action would lie against all

the slanderers because each man's voice was only a part of the whole sound that reached him; that the song was a melody—a succession of single musical sounds. 2 *Burr,* 980. And in the case of *State v. Marlier,* 46 Mo. App. 233, this particular doctrine was extended, the court saying: 'If several parties give voice to the same utterance at the same time they may be proceeded against jointly as it is an entire offence—one joint act done by all—and the more there are joined in it, the greater is the offence."

However, the older English courts held rigidly to the rule that in slander the words of one were not the words of another and that the plaintiff must bring several and not joint actions. In an old case in *Gouldsborough's Reports,* p. 76, judgment was given against the defendant for having accused plaintiff and his family of robbing him. The rest of the family did not join in the action and it was moved in arrest of judgment by the defendant because the plaintiff alone had brought this action. But the court held that the action had been well brought because the slander was several and every one slandered had a several action. *Barrat & Hodsoll v. Collin,* 10 Moore 451; *Bishop's Criminal Procedure* (2nd Ed.), Sect. 811; *Harding v. Greening,* 8 Taunt. 42; *Rice v. McAdams,* 149 N. C. 29; *Thomas v. Rumsey,* 6 Johns. 26; *Hinckle v. Davenport,* 38 Ia. 355.

Perhaps the most outspoken opinion on this matter in the United States is *Webb v. Cecil & Vaughan,* 9 B. Mun. (Tenn.) 198, where it was held in a joint action against the defendants for slander of title that a joint action could not be maintained against two individuals for slander of title by words—no conspiracy being alleged. The court said: "The words of one are not the words of the other. The act of each constitutes an entire and distinct offence. *The same words spoken by one may occasion much greater injury than if spoken by another.* Each should only be responsible for the injury inflicted by his own independent act." 13 *Ency. Pl. & Pr.,* 30; *Starkie on Slander & Libel* (Wood's Ed.), Sect. 410; *Newell on Slander & Libel,* p. 243; 18 *Am. & Eng. Ency. of Law,* 1057.

We must not confuse the action of slander with that of libel. The authorities are all agreed that the doctrine in question does not apply to *written* defamation. The court in *Thomas v. Rumsey, supra,* in distinguishing libel from slander said: "This is

not like an action against several persons for speaking the same words. Such an action cannot be maintained because the words of one are not the words of another. But with respect to libel, if one repeat and another write and a third approve what is written, they are all makers of the libel for all persons who concur and show their assent or approbation of the doing of an unlawful act are guilty."

It was even held at common law that if a husband and wife uttered similar words simultaneously there were two separate publications, and that an action must be brought against the husband alone for what he said, and against the wife and husband for what she said. *Penters v. England,* 1 McCord 14. It was held also that two offenders could not be joined in a single count charging the offence of uttering obscene language, because the words of one were not the words of the other. *State v. Roulstone et al.,* 3 Sneed (S. C.) 107.

Without attempting to discuss the liability of a corporation for slanderous statements of its agents it might be well to say a word on it because of its somewhat analogous relation to a partnership.

Odgers on Slander & Libel (star, p. 368), contends that a corporation will not be liable for slander by its agent even when the agent be acting within the scope of his authority, unless it appears that the corporation has expressly directed him to speak the words; that slander is the voluntary and tortious act of the speaker. *Kane v. Mutual Life Ins. Co.,* 200 Mass. 265; *Pa. Iron Works Co. v. Henry Voght Mach. Co.,* 96 S. W. 551. And in *Singer Mfg. Co. v. Taylor,* 150 Ala. 574, the court said: "By reason of the fact that slander is the voluntary and tortious act of the speaker and is more likely to be the expression of momentary passion or excitement of the agent, it is, we think, rightly held that the utterance of slanderous words must be ascribed 'to the personal malice of the agent rather than to an act performed in the course of his employment and in aid of the interest of his employer, and exonerating the company unless it authorized or ratified the act of the agent uttering the particular slander.' "

However, *Marshall on Corporations,* p. 311, says, that a corporation will be liable for the slanderous statements of its employees if committed within the course of a transaction which is

within the scope of their authority. *Rivers v. Y. & M. V. Ry. Co.*, 90 Miss. 196; *Jordan v. A. G. S. Ry. Co.*, 74 Ala. 85; *Phila. W. & B. R. R. v. Quigley*, 21 How. 202.

The courts of Michigan apparently make no distinction between slander and other tortious acts and hold that partners are jointly liable for statements made by one in derogation of a competitor and in aid of the firm's business. *Haney Mfg. Co. v. Perkins*, 78 Mich. 1; *Chesbro v. Powers*, 78 Mich. 472.

It seems to be perfectly reasonable that greater liberty should be allowed in the case of words spoken than of writing. The master cannot be in a position at all times to control the tongues of his servants. So while it is generally sufficient, in seeking to hold the master liable for the acts of his servant's, to allege that the act was within scope of the servants authority, the better authority would seem to be that a more lenient application of the rule should be applied in a case of oral defamation by the servant. How easy it is for one to slander while under the influence of passion or excitement! It is true that the principal ordinarily is responsible for the character of the agents he employs. But no matter how great the amount of care he may exercise, it will not be sufficient to guard against an occasional loss of temper which may lead to the making of slanderous statements.

Quoting from the court, in the case being commented upon: "A speech by the agent or servant when absent from the principal or master is absolutely within his power alone to control. He may be prudent and discreet, or reckless or careless in his conversation. He may have his tongue under perfect control; or under no control whatever, may speak freely about persons and things, or talk little."

It would appear from a review of all the authorities that where it is sought to hold a partner liable for defamatory utterances by his agent or servant (he would be in the position of principal for the acts of his co-partner), the better opinion is that he cannot be held if it is merely alleged that the agent or servant was acting within the scope of his authority, as that expression is commonly used. It must be further shown that the principal or master directed or authorized the agent or servant to speak the actionable words or afterwards ratified them.